Supreme Court, U.S.
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92-1581

NO. _____

IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1992

DAVID M. LADEN,

Petitioner

vs.

CITY OF PHILADELPHIA,

CITY OF PHILADELPHIA EMPLOYEES,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI AND APPENDIX

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QUESTIONS PRESENTED

1. After Owen v. Independence, do municipalities and their employees have any immunity from suit for their alleged constitutional violations?

2. After Gomez v. Toledo, can qualified immunity asserted on a motion to dismiss defeat a cause of action at the outset?

3. After Parklane Hosiery Co. v. Shore, can a municipal board previously ruled non-quasi-judicial be collaterally estopped from claiming such immunity?

4. Does the quasi-judicial immunity established in Butz v. Economou apply to a municipal board whose proceedings are not adversarial, whose decisions do not rely on precedent, and do not permit errors to be corrected on appeal?

5. After Pulliam v. Allen, do quasi-judicial officials have any immunity from prospective injunctive relief?

LIST OF PARTIES

DAVID M. LADEN, Petitioner

vs.

CITY OF PHILADELPHIA, CITY OF PHILADELPHIA EMPLOYEES WILLIE WILLIAMS, LAWRENCE KLOPFLE, RAYMOND HARTMAN, DONALD KLIGERMAN, ROBERT J. D'AGOSTINO, JAMES P. LYNN, ANTHONY P. RABUTINO, JIMMIE MOORE, ESQ., LARRY A. THOMAS, JERALD BATOFF, ESQ., F. LEE JONES, ALAN KESSLER, ESQ., HARRY SHUGAR, CHARISSE R. LILLIE, ESQ., CURELEY A. COLE, ESQ., JOHN P. STRAUB, ESQ., DAVID J. DOMZALSKI, ESQ., JOHN DOE AND RICHARD ROE, all City of Philadelphia employees individually and as employees of the City of Philadelphia, and NEW ROCK REPORTING CO., INC., T/A SCHULMAN/DE SIMONE - THE COURT REPORTERS, Respondents

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NO. _____

IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1992

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Petitioner, David M. Laden, appellant in the court below, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above case December 29, 1992 that affirmed the judgment of the United States District Court for the Eastern District of Pennsylvania entered in the above case on July 29, 1992 that vacated and reaffirmed its Order and Opinion entered June 9, 1992 granting the City of

Philadelphia and its employees immunity from suit for their alleged constitutional and RICO violations on their motion to dismiss under Fed.R.Civ.P. 12(b)(6).

OPINIONS BELOW

The unpublished opinion of the Court of Appeals for the Third Circuit, docket number 92-1628, appears in Appendix A to this Petition. The unpublished opinion of the District Court for the Eastern District of Pennsylvania in 92 cv 0697, entered June 9, 1992, appears in Appendix B. The order of the District Court for the Eastern District of Pennsylvania in 92 cv 0697, entered July 29, 1992 appears in Appendix C.

JURISDICTION

The Court of Appeals' Judgment in this matter was entered on December 29, 1992 and this petition for certiorari was filed within 90 days of that date. A

timely Petition for Rehearing was filed on January 8, 1993. The Court of Appeals' denial of the Petition for Rehearing was issued on January 22, 1993 and is set forth in Appendix D. This Court's jurisdiction is invoked under Title 28, U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV, Sec. 1, to the United States Constitution is set forth in Appendix E. Title 18, U.S.C. § 1964(c) is set forth in Appendix F. Title 42, U.S.C. § 1983 is set forth in Appendix G. Title 2, Pa. C.S. § 555 is set forth in Appendix H. Philadelphia Court of Common Pleas Civil Rule 320(H) is set forth in Appendix I.

STATEMENT OF THE CASE

The United States District Court for the Eastern District of Pennsylvania, had

jurisdiction pursuant to Title 28, U.S.C. § 1331.

Petitioner, a federally licensed gun collector, was refused a license by the City of Philadelphia's (City) Department of Licenses and Inspections (L&I), a denial that the City, in later Commonwealth Court pleadings, characterized as "not correct" (their emphasis), that "he would need a license to carry as a gun collector". Laden v. Board of License and Inspection Review, 0939 C.D. 1991, Pa. Commonwealth Court (Appellee's Brief at 26).

After an administrative hearing before the City's Board of License and Inspection Review (Board), where the same solicitors who represented the "appellee" L&I also provided the Board with binding legal advice, and L&I's "witness" misread an inaccurate police report concerning petitioner's type and amount of guns and

his collecting intentions into the record, the Board upheld L&I's denial but never -- despite orders from both the Commonwealth and Common Pleas Courts (Appendices J and K), the requirements of state law 2 Pa. C.S. §555 (Appendix H) and Court Rule 320(H) (Appendix I) -- found any facts nor gave any reason for its decision.

The District Judge described this failure as:

> (a)ppalling nonfeasance. This concatenation of nonevents is Kafkaesque, is it not?

(N.T. p. 24) and:

> He will be making topsoil before they come up with this thing. Justice delayed is you know what.

(N.T. p. 33).

The Board's denial notice, sent by mail, quoted a non-existent Philadelphia Civil Rule (146[sic]) saying petitioner had to pay for and provide the Board with

hearing transcripts in order to access Common Pleas Court to appeal its decision.

The Board falsely certified the record as complete, but to date has refused to supply the record on appeal, including findings of fact and reasons for its decision.

Common Pleas Court upheld the Board's decision, but Commonwealth Court vacated the lower court decision, noting:

> Our review of this case is precluded because the Board did not find any facts and did not state reasons for its adjudication. This court is unable to perform its appellate function.

Laden v. Board of License and Inspection Review, supra at 3 (A28).

On February 4th and February 25th, 1992 petitioner filed a Complaint and Amended Complaint in the Eastern District Court of Pennsylvania.

Petitioner claimed that as a proximate result of respondents' actions, made under color of state law, certain of his various federal and state civil rights were abridged, including access to courts, procedural and substantive due process and others more fully described on the Amended Complaint, charged RICO violations by defendants and that the defendants were therefore liable to him for money damages.

Petitioner also asked the Court for declaratory and injunctive relief.

On March 2, 1992 City of Philadelphia (City) respondents moved to dismiss the complaint. On March 13, 1992 petitioner answered, asking to amend his complaint if necessary. On April 15, 1992 petitioner obtained an entry of default against New Rock. On April 28, 1992 petitioner moved for default judgment

against New Rock and on May 5, 1992 for a temporary restraining order and preliminary injunction ordering respondents to supply the record on appeal in order that he might gain access to the courts. A hearing was held June 1, 1992 on the above motions.

On June 9, 1992 the District Court entered an order that denied petitioner's Motion for Temporary Restraining Order and Preliminary Injunction, vacated the Entry of Default against New Rock and dismissed the Complaint with prejudice, citing principals of quasi-judicial and qualified immunity and the Burford and Colorado River abstention doctrines.

On June 17, 1992 petitioner moved for reconsideration and on July 29, 1992 the District Court granted the motion, vacating and reaffirming its original order (App. C), and on August 4, 1992 peti-

tioner appealed this decision to the Court of Appeals for the Third Circuit, again arguing that there was no concurrent state case, no common defendants and no common relief; that the City had no immunity and that the remaining defendants were at best qualifiedly immune, but that granting such immunity on a 12 (b)(6) motion to dismiss, before an answer and discovery, was improper; and that in a prior case, Midnight Sessions, Ltd. v. City of Philadelphia, et al., 945 F.2d 667 (3d Cir. 1991), reversed and vacated in part and remanded on other grounds, the Board had been ruled non-quasi-judicial in district court and was therefore estopped from asserting such claims.

Petitioner also argued that New Rock had not joined in the City respondents' Motion to Dismiss.

On December 29, 1992, the Court of

Appeals, by judgment order, affirmed the decision of the lower court on the ground of respondents' immunity.

On January 8, 1993 petitioner petitioned the Court of Appeals for Rehearing and on January 22, 1993 the Court denied his petition.

Petitioner now petitions this Court for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for two reasons: a United States court of appeals has decided important federal questions in a way that conflicts with applicable decisions not only of this Court, but applicable decisions of all Circuits; and the decision below sanctioned state actions described by the lower court as "Kafkaesque" and call for the exercise of this Court's supervision.

A. INTRODUCTION

As can be seen from the caption, the respondents (defendants) are a City and its employees and its agent, sued both as individuals and as employees.

Petitioner sought monetary, declaratory, and injunctive relief for respondents' alleged violations of his state and federally protected rights and of the RICO statutes.

In lieu of an answer, and before any discovery, City respondents filed a Fed. R.Civ.P. 12(b)(6) Motion to Dismiss.

In response to City respondents' motion, the lower court granted judicial immunity to those respondents involved with the Board and qualified immunity to the remaining respondents. The Court below upheld this decision.

In Forrester v. White, 484 U.S. 219, 224 (1988), this Court observed that ju-

dicial immunity is:

> justified and defined by the functions it protects and serves, not by the person to whom it attaches.

Since different respondents perform different functions, and may have different immunities, if any, they are addressed by function:

B. THE CITY OF PHILADELPHIA

Holding all respondents immune on a motion to dismiss, including the City of Philadelphia (City), contradicts a large body of long established Supreme Court and published Circuit Court rulings, including those of the Third Circuit, that established municipalities' liability for their alleged constitutional violations.

The question of whether a city can be held liable in a civil rights action is a most important federal question which affects the drafting of literally thousands of complaints filed every year.

The Third Circuit has now held that the City is immune.

This decision is a complete departure from the prior decisions of the Supreme Court and of all the circuits and certiorari should be granted so that the decision of the Third Circuit can be reversed.

This Court in Owen v. Independence, 445 U.S. 622, 624 (1980) (petitioner given no reason for his dismissal), citing Monnell v. Dept. of Social Services, 436 U.S. 658 (1978), stated that Monnell held that local governments were "persons" to whom 42 U.S.C. § 1983 applies and were not immune from suit under the statute.

Like the petitioner in Owen, who was given no reason for his dismissal, petitioner too was given no reason for his denial, despite the due process guarantees of our Constitution (App. E) and the

statutes, rules and orders (2 Pa. C.S. § 555 (App. H), Philadelphia Civil Rule 320 (H) (App. I) and the orders of both: (a) Common Pleas Court of October 11, 1990 (App. K) and (b) Commonwealth Court of October 21, 1991 (App. J)) which bring form to the substance of these guarantees.

Moreover, due to City respondents' "appalling nonfeasance" (statement of trial judge, N.T. June 1, 1992, p. 24), petitioner has been unable to access the state courts:

> Our review of this case is precluded because the Board did not find any facts and did not state reasons for its adjudication. This court is unable to perform its appellate function.

Laden v. Board of License and Inspection Review, supra at 3 (A28).

Owen v. Independence, supra at 638, further states that:

> There is no tradition of immunity for municipal corporations, and neither history nor policy supports a construction of § 1983 that would justify the qualified immunity accorded the City (of Independence).
>
> We hold, therefore, that the municipality may not assert the good faith of its officers or agents as a defense to liability under § 1983.

and:

> How "uniquely amiss" it would be, therefore, if the government itself... were permitted to disavow liability for the injury it has begotten.

id. at 651.

By granting immunity to the City, a United States court of appeals has decided a most important federal question in a way that conflicts with applicable decisions, not only of this Court, but applicable decisions of all[1] Circuits.

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1. A partial list of cases in all the circuits adopting this aspect of Owen v. Independence follows:
Brown v. U.S., 742 F.2d 1498, 1509 (D.C. Cir. 1984); Blackburn v. Snow, 771 F.2d 556, 571 (1st Cir. 1985); Dunton v. County of Suffolk, 729 F.2d 903, 907 (2nd

The cited cases establish that the unanimous rule outside the Third Circuit (and heretofore in the Third Circuit) is that municipalities have no immunity from suit under § 1983.

The decision below is in conflict with this Court and the other circuits and constitutes an aberration in an extremely significant area of constitutional law.

Thus, this Court should grant cer-

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1. contd. --

Cir. 1984); Brown v. Grabowski, 922 F.2d 1097, 1105 (3d Cir. 1990); Gooden v. Howard Cty. Md., 917 F.2d 1355, 1363 (4th Cir. 1990); Fields v. City of S. Houston, Tex., 922 F.2d 1183, 1191 (5th Cir. 1991); Leach v. Shelly Cty. Sheriff, 891 F.2d 1241, 1245 (6th Cir. 1989); Buckley v. Fitzsimmons, 919 F.2d 1230, 1238 (7th Cir. 1990); Murray v. City of Sioux Falls 867 F.2d 472, 474 (8th Cir. 1989); Hammer v. Gross, 932 F.2d 842, 850 (9th Cir. 1991); Ross v. Neff, 905 F.2d 1349, 1355 (10th Cir. 1990); and Moore v. Morgan, 922 F.2d 1553, 1556 (11th Cir. 1991).

tiorari and reverse this anomolous decision of the Third Circuit that jeopardizes the civil rights statutes.

C. CITY OF PHILADELPHIA EMPLOYEES NOT INVOLVED WITH THE BOARD OF LICNSE AND INSPECTION REVIEW

This Court, in Burns v. Reed, __U.S. __, 111 S.Ct. 1934, 1939 (1991) held that qualified immunity, rather than absolute immunity is sufficient to protect government officials in the exercise of their duties.

This Court, in Gomez v. Toledo, 446 U.S. 635, 640 (1979) has also noted that:

> Moreover, this Court has never indicated that qualified immunity is relevant to the existence of the plaintiff's cause of action; instead we have described it as a defense available to the official in question.

The Court of Appeals upheld the lower court's grant, on a Fed.R.Civ.P. 12 (b)(6) Motion to Dismiss, before an answer, before discovery, of what appears to

be qualified immunity, to the following City administrators[2], respondents who were not involved with the Board but who were otherwise involved in the denial of petitioner's license:

Williams, Hartman, Kligerman,

D'Agostino, Roe and Doe

(District Court Order and Opinion entered June 9, 1992 at 3-4) (A6, A8-A9).

As this Court's ruling in Gomez v. Toledo, supra, made abundantly clear, qualified immunity is a matter of defense and does not defeat a plaintiff's cause

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2. The lower court opinion did not name the City or these specific respondents nor does it use the term "qualified immunity". Since it did name other specific respondents in its discussion of immunity (A6-8) and since it immunized all respondents, by implication, these respondents appear to have been immunized. Likewise, while the phrase "qualified immunity" was not used, the citing (A8) of Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982) and the context used, appears to imply this.

of action at the outset.

The question of whether qualified immunity asserted on a motion to dismiss can defeat a cause of action at the outset of a civil rights action is an important federal question which affects literally thousands of complaints filed every year. The Third Circuit has now held that it can.

This decision conflicts with prior decisions, not only of this Court, but prior decisions of all[3] circuits, including the Third.

The cited cases establish that the

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3. A partial list of cases in all the circuits adopting this aspect of Gomez v. Toledo follows:
Martin v. D.C. Metro. Police Dept., 812 F.2d 1425, 1434 (D.C. Cir. 1987); Franco-De Jerez v. Burgos, 876 F.2d 1038, 1040 (1st Cir. 1989); Oliver Schools, Inc. v. Foley, 930 F.2d 248, 253 (2nd Cir. 1991); People of Three Mile Island v. Nuclear Reg. Com'rs., 747 F.2d 139, 143 (3d Cir. 1984); Thurston v. U.S., 810 F.2d 438,

unanimous rule outside the Third Circuit (and heretofore in the Third Circuit) is that qualified immunity is an affirmative defense that must be raised in the answer and established at trial or on a motion for summary judgment and does not defeat the plaintiff's cause of action at the outset.

This decision is a complete departure from the prior decisions of the Supreme Court and of all the circuits and an aberration in an extremely significant area of constitutional law.

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3. Contd. --

443 (4th Cir. 1987); Adams v. Gunnell, 729 F.2d 362, 366 (5th Cir. 1984); Kennedy v. City of Cleveland, 797 F.2d 297, 300 (6th Cir. 1986); Mc Kinney v. George, 726 F.2d 1183, 1187 (7th Cir. 1984); Stow v. Cochran, 819 F.2d 864, 869 (8th Cir. 1987); Bilbrey by Bilbrey v. Brown, 738 F.2d 1462, 1469 (9th Cir. 1984); Houston v. Reich, 932 F.2d 883, 887 (10th Cir. 1991); and Moore v. Morgan, 922 F.2d 15-53, 1557 (11th Cir. 1991).

Thus, certiorari should be granted so that the decision of the Third Circuit can be reversed and this substantial and improper pleading hurdle be removed from a plaintiff in that Circuit.

D. CITY OF PHILADELPHIA EMPLOYEES INVOLVED WITH THE BOARD OF LICENSE AND INSPECTION REVIEW

Citing Butz v. Economou, 438 U.S. 478, 519-522 (1978), the lower court found the Board performs quasi-judicial functions and granted, the Circuit court affirming, absolute immunity to the following City respondents who were involved with the Board in the denial of petitioner's license:

> Lynn, Rabutino, Moore, Thomas, Batoff, Jones, Kessler (Board members), Shugar (Board administrator), Klopfle (City witness), Cole, Straub and Domzalski (City solicitors), Lillie (City Solici-

tor) and New Rock (official agency stenographer)

Order and Opinion June 9, 1992, at 2-3 (A6-A8).

For the following reasons this grant also conflicts with applicable decisions, not only of this Court, but applicable decisions of all Circuits:

a. OFFENSIVE COLLATERAL ESTOPPEL

The Board is an administrative body that reviews the decisions of the Department of Licenses and Inspections.

The issue of whether or not they are quasi-judicial or merely quasi-legal has been previously adjudicated.

In Midnight Sessions, Ltd. v. City of Philadelphia, et al., supra, on both motions to dismiss and for summary judgment, Memorandum Ops. in 90-0132 (E.D. Pa. 1990), the Board was ruled not to be a quasi-judicial body, merely an adminis-

trative one. Thus, its members and those involved with them were held not to be judicially immune from suit.

During the trial, on August 2, 1990, it was stipulated and ordered that:

> The jury shall be charged and directed that the City of Philadelphia is legally responsible for all acts and omissions of each member of the Board of License and Inspection Review, Plonski, D'Agostino, Mosely and Cole. The City of Philadelphia shall make no contrary argument or contention on appeal, or in any subsequent proceedings arising out of this matter.[4]

(A32).

id., Docket Entry No. 106 August 2, 1990.

Their defense was vigorous, millions of dollars were involved and the City was eventually, in part, victorious, but not on that issue, which was at every turn, lost on the merits.

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4. These defendants, or the present City employees who have since replaced them in their positions, e.g. Kligerman for Plonski, are also respondents here.

The previous judgment was not inconsistent with any previous judgments against the respondents and this action afforded them no additional opportunities unavailable in the first action that could readily cause a different result; respondents had a full and fair opportunity to present their claim to quasi-judicial immunity in the prior litigation.

The above-named respondents who were involved with the Board have clearly met the above criteria this Court set forth in Parklane Hosiery Co. v. Shore, 439 U.S. 322, 330-331 (1979) and are therefore offensively collaterally estopped from asserting a defense based on quasi-judicial immunity.

Further, Allen v. Mc Curry, 449 U.S. 90, 94 (1980) applied the rules of collateral estoppel with full force to actions brought under § 1983 and noted, that by

preventing inconsistent decisions, collateral estoppel encourages reliance on adjudication.

The question of whether a municipal board previously ruled not entitled to judicial immunity is offensively collaterally estopped from asserting such a claim is a most important federal question which affects numerous complaints filed every year. The Third Circuit has now held that it is not estopped.

This decision is a complete departure from the prior decisions of the Supreme Court and of all[5] the circuits and certiorari should be granted so that the decision of the Third Circuit can be reversed.

The cited cases establish that the

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5. A partial list of cases in all the circuits adopting this aspect of Parklane Hosiery follows:

unanimous rule outside the Third Circuit (and heretofore in the Third Circuit) is that the rules of offensive collateral estoppel apply to prevent relitigation of an issue previously adjudicated.

The decision below is in conflict with this Court and the other circuits and constitutes an aberration in an ex-

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5. Contd. --

Securities Industry Assn. v. Board of Governors, 900 F.2d 360, 363 (D.C. Cir. 1990); Fiumara v. Fireman's Fund Ins. Cos., 746 F.2d 87, 92 (1st Cir. 1984); U.S. v. Internat. Broth. of Teamsters, 905 F.2d 610, 621 (2nd Cir. 1990); Scooper Dooper, Inc. v. Kraftco Corp., 494 F.2d 840, 845-846 (3d Cir. 1974); Sandberg v. Va. Bankshares, Inc., 891 F.2d 1112, 1124 (4th Cir. 1989); Mc Duffie v. Estelle, 935 F.2d 682, 685 (5th Cir. 1991); Farber v. Massillon Bd. of Educ., 908 F.2d 65, 74 (6th Cir. 1990); Rockford Mut. Ins. Co. v. Amerisure Ins. Co., 925 F.2d 193, 198 (7th Cir. 1991); Lane v. Peterson, 899 F.2d 737, 741 (8th Cir. 1990); National Medical Ent., Inc. v. Sullivan, 916 F.2d 542, 545 (9th Cir. 1990); Klein v. C.I.-R., 880 F.2d 260, 262 (10th Cir. 1989); and Matter of Mc Whorter, 887 F.2d 1564, 1566 (11th Cir. 1989).

tremely significant area of law.

Thus, this Court should grant certiorari and reverse this anomolous decision of the Third Circuit that improperly and unfairly forces a litigant to reestablish the established and to watch the same respondents, in another courtroom in the same courthouse, answer for their alleged civil rights and RICO violations.

b. QUASI-JUDICIAL IMMUNITY, GENERALLY

Even if this issue had not been previously adjudicated, the Board is plainly an administrative, not a quasi-judicial body. Immunity here is improper.

This Court has noted:

> We have been quite sparing in our recognition of absolute immunity.

Burns v. Reed, supra at 1939; and:

> Officials who seek exemption from personal liability have the burden of showing that such an exemption is justified by overriding considerations of public policy

Forrester v. White, supra at 224.

Butz v. Economou, supra at 513-514, and Cleavinger v. Saxner, 474 U.S. 193, 203-4 (1985) set forth the factors necessary to distinguish executive from judicial decisions.

Among them, were (a) the presence of procedural safeguards, e.g. a neutral arbiter (see Note 7, page 30, infra) and a decision based on the record with a statement of the reasons for the result, something that respondents have refused to provide despite the aforementioned laws, rules and court orders:

> The Court: Aren't we entitled to factual findings from those people? I don't know why they ruled as they did.[6]

N.T. June 1, 1992, p. 26.

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6. The District Court Opinion later quoted extensively (A5) -- re reasons for the denial, e.g. Laden listed self-defense(sic), Laden didn't establish his

Also listed--(b) insulation from political influence. The Board members are part-time employees of the City who serve at the pleasure of the Mayor, an inherent conflict of interest; they possess no particular expertise in the myriad of various licensing, permit, health and building code issues, from guns to drainage to rat control and cannot be called impartial professionals, Cleavinger v. Saxner, supra at 203-204.

They don't, as noted in Midnight Sessions, supra (Memorandum Opinion, July 23, 1990 at 17), (c) rely on precedent,

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6. contd. --
collector status to the Board's satisfaction(sic) -- from both the vacated Common Pleas Court Order of March 18, 1991 which was vacated precisely because no facts were ever found nor were any reasons ever given by the Board, and from the respondents' Motion to Dismiss, also improper in a Fed.R.Civ.P. 12(b)(6) context. See A24-A25 for actual facts found in state court.

(d) the proceedings are not adversarial -- their concept of "neutrality" is that the same solicitors[7] that represented the appellee L&I in the same case provided the Board with binding legal advice; and (e), by their actions, which were described by the district court as:

> THE COURT: Function is perhaps an inappropriate verb considering their appalling nonfeasance. This concatenation of non-events is Kafkaesque, is it not?

(N.T. p. 24), do not permit errors to be corrected on appeal.

As in Cleavinger v. Saxner, supra at 206, petitioner could not compel the attendance of an important witness, there

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7. Respondents Straub and Domzalski simultaneously represented not only the "appellee" Department of L&I before the Board but the Board itself. They also provided the Board, at its request, with binding legal advice in their separate capacities as Law Department employees, a clear violation of neutrality.

was no right of discovery, there was no cognizable burden of proof, the transcript has still not been produced to the Court as ordered, and the information presented was often hearsay and self-serving.

As Burns v. Reed, supra at 1943 (no absolute immunity for state prosecutor who gave legal advice to police) made clear, official behavior must be intimately related to the judicial process.

The "Kafkaesque" acts described here clearly do not meet the test of quasi-judiciality as established by this Court in Butz v. Economou, supra and Cleavinger v. Saxner, supra.

The most that the respondents who are involved with the Board may be entitled to is qualified immunity, and as has been shown above, such a grant on a motion to dismiss is premature at best.

The Appeals Court's upholding of the lower court's granting these respondents quasi-judicial immunity was improper and conflicts with applicable decisions of this Court regarding an important federal question.

Thus, this Court should grant certiorari and reverse this decision of the Third Circuit that improperly cloaks administrators with the robes of judges and immunizes them from suit.

c. QUASI-JUDICIAL IMMUNITY AS A BAR TO PROSPECTIVE INJUNCTIVE RELIEF

This Court concluded in Pulliam v. Allen, 466 U.S. 522, 541-542 (1984), that

> judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity

Even if the Board were a quasi-judicial body, and they most definitely are not, the grant of immunity from declaratory and injunctive relief was improper.

The question of whether there is any immunity from prospective declaratory or injunctive relief is an important federal question affecting numerous complaints filed every year. The Third Circuit has now held that the City and its employees are immune from such relief.

This decision is a complete departure from the prior decisions of the Supreme Court and of all the circuits and certiorari should be granted so that the decision of the Third Circuit can be reversed.

Since petitioner also asked for injunctive relief -- that the City produce the record on state appeal so that he might gain access to both the federal and state courts -- the Court of Appeals' upholding of the grant to respondents of quasi-judicial immunity conflicts with applicable decisions, not only of this

Court, but those of all[8] circuits regarding an important federal question.

The cited cases establish that the unanimous rule outside the Third Circuit (and heretofore in the Third Circuit) is that there is no immunity from declaratory and injunctive relief.

The decision below is in conflict with this Court and the other circuits

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8. A partial list of cases in all the circuits adopting this aspect of Pulliam v. Allen follows:
Reuben v. U.S., 750 F.2d 1039, 1065 (D.C. Cir. 1984); Bettencourt v. Bd. of Reg. in Medicine, 904 F.2d 772, 781 (1st Cir. 1990); Morano v. Dillon, 746 F.2d 942, 944 (2d Cir. 1984); Georgevitch v. Strauss, 772 F.2d 1078, 1088-1089 (3d Cir. 1985); Beaudett v. City of Hampton, 775 F.2d 1274, 1277 (4th Cir. 1985); Carbalan v. Vaughn, 760 F.2d 662, 664 (5th Cir.1985); Sevier v. Turner, 742 F.2d 262, 269 (6th Cir. 1984); Lowe v. Letsinger, 772 F.2d 308, 312 (7th Cir. 1985), Rose v. State of Nebraska, 748 F.2d 1258, 1263 (8th Cir. 1984); U.S. v. Yakima Tribal Court, 806 F.2d 853, 861 (9th Cir. 1986); Martinez v. Winner, 771 F.2d 424, 436 (10th Cir. 1985); and Dykes v. Hoseman, 743 F.2d 1488, 1494 (11th Cir. 1984).

and constitutes an aberration in an extremely significant area of constitutional law.

Thus, this Court should grant certiorari and reverse this anomolous decision of the Third Circuit that effects an improper bar to access to courts, a fundamental right.

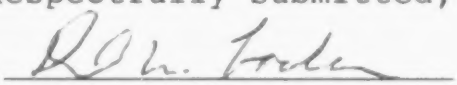
Both Congress and the Constitution extended the equal protection of the laws to all persons. Unfortunately, to date, with respect to petitioner, this promise has been more myth than practice.

The Court below ignored all controlling precedent. Their decision must not be allowed to stand; it must be reversed.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.[9]

Respectfully submitted,



David M. Laden, pro se

Petitioner

DATED: March 25, 1993.

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9. If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the Court of Appeals for redetermination in the light of this Court's opinions in Owen v. Independence, Gomez v. Toledo, Parklane Hosiery Co. v. Shore, Butz v. Economou, and Pulliam v. Allen, all supra.

NO. _____

IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1992

DAVID M. LADEN,

Petitioner

vs.

CITY OF PHILADELPHIA,

CITY OF PHILADELPHIA EMPLOYEES,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

APPENDIX TO

PETITION FOR WRIT OF CERTIORARI

David M. Laden, pro se

323 West Allens Lane

Philadelphia, PA 19119

(215) 247-4108

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 92-1628

DAVID M. LADEN,

Appellant

v.

CITY OF PHILADELPHIA,

CITY OF PHILADELPHIA EMPLOYEES

On Appeal from the United States District Court for the Eastern District of Pennsylvania (D.C. Civil No. 92-00697)

District Judge: Hon. Robert S. Gawthrop, III

Submitted Under Third Circuit Rule 12(6)

November 30, 1992

Before: SLOVITER, Chief Judge, HUTCHINSON and ROTH, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court that this action be dismissed on the grounds of immunity of the defendants be and is hereby affirmed. Costs taxed against appellant.

Attest: By the Court,

Sally Mrvos, D. Sloviter

Sally Mrvos, Clerk Chief Judge

Dated: Dec. 29, 1992

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID M. LADEN, Plaintiff :

v. :

CITY OF PHILADELPHIA, CITY OF PHILADELPHIA EMPLOYEES WILLIE WILLIAMS, LAWRENCE KLOPFLE, RAYMOND HARTMAN, DONALD KLIGERMAN, ROBERT J. D' AGOSTINO, JAMES P. :

LYNN, ANTHONY P. RABUTINO, JIMMIE MOORE, :
ESQ., LARRY A. THOMAS, JERALD BATOFF, :
ESQ., F. LEE JONES, ALAN KESSLER, ESQ., :
HARRY SHUGAR, CHARISSE R. LILLIE, ESQ., :
CURELEY A. COLE, ESQ., JOHN P. STRAUB, :
ESQ., DAVID J. DOMZALSKI, ESQ., JOHN DOE:
AND RICHARD ROE, all City of Philadel- :
phia employees individually and as emp- :
ployees of the City of Philadelphia, and:
NEW ROCK REPORTING CO., INC., T/A SCHUL-:
MAN/DE SIMONE - THE COURT REPORTERS, De-:
fendants :

CIVIL ACTION NO. 92-0697 FILED JUNE 8, 1992 ENTERED: 6-9-92 CLERK OF COURT

MEMORANDUM AND ORDER

Gawthrop, J. June 5, 1992

Plaintiff brings this pro se civil rights action, asserting jurisdiction under 42 U.S.C. §§1983 and 1985(3), and the Pennsylvania and United States Constitutions, for violations of his rights in

connection with his as-yet-unsuccessful application for a firearms permit, most recently remanded by the Pennsylvania Commonwealth Court to the Philadelphia Board of

License and Inspection Review for further review. Defendants have moved to dismiss, under Fed.R.Civ.P. 12(b)(6).

BACKGROUND

Plaintiff Laden sought, from the Philadelphia Department of License and Inspection, a license to carry a firearm, citing his purported avocation of gun collecting as his proper reason for a license, under 18 Pa.C.S. §6109(e)(2). After several administrative hearings and an appeal before the Board of License and Inspection review, the Board denied him a license for failure to demonstrate that he was a gun collector. On his supple-

mental application form, Mr. Laden listed self defense as his reason for seeking a permit. The Board deemed this supplemental reason to cast doubt on his earlier assertion that the reason he wanted the permit was to pursue his interest in gun collection. (Def. Mot. to Dismiss at 4). Plaintiff sought judicial review of the decision in the Court of Common Pleas of Philadelphia County, which denied relief, grounding its decision upon Laden's failure to establish to the Board's satisfaction his status as a gun collector. Laden v. Board of License and Inspection Review, No. 939 C.D. 1991, at 2, (Oct. 21, 1991). Plaintiff then appealed to the Pennsylvania Commonwealth Court. On October 21, 1991, the Commonwealth Court remanded the case to the Board "to make findings of facts and reasons for the adjudication." It has been

pending before that tribunal since that date. Plaintiff has since brought this federal civil rights

suit, which defendants have moved to dismiss. It asserted two bases, which I treat in turn.

DISCUSSION

1. Immunity Doctrine

It appears that most, if not all, the defendants are immune from suit under several recognized forms of common-law judicial immunity. The then-members of the Board of License and Inspection, Defendants James P. Lynn, Anthony P. Rabutino, Jimmie Moore, Larry A. Thomas, Jerald Batoff, F. Lee Jones, and Alan Kessler, are entitled to a defense of absolute immunity, as government officials who perform quasi-judicial functions. Butz v. Economou, 438 U.S. 478, 519-522

(1978). Individuals involved in the judicial process or who perform duties related to such process are also absolutely immune. Ross v. Meagan, 638 F.2d 646, 649 (3d Cir. 1981); See also, Dellenbach v. Letsinger, 889 F.2d 755, 762-63 (7th Cir. 1989), cert. denied, 494 U.S. 1085 (1990) (acts of court personnel requesting and receiving payment for transcript, pursuant to judge's instruction are functions integral to the judicial process, and thus, entitled to absolute immunity). Defendants New Rock Reporting, Inc. and Harry Shugar, the Board review administrator, are, therefore, immune. Witnesses who testify at trial, even police officers, are entitled to absolute immunity for their testimony, Briscoe v. La Hue, 460 U.S. 325 (1983); thus, defendant Klopfle, is immune, since the plaintiff's claims against him are

solely directed

toward his having testified. Defendants Cole, Straub, and Domzalski, as government officials acting in the role of prosecutors, are also entitled to immunity. Butz v. Economou, supra.

The plaintiff has also sued named and unnamed defendants, all employees of the City of Philadelphia. "Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); see also, Hynson v. City of Chester, 864 F.2d 1026, 1032 (3d Cir. 1983).

As the Third Circuit has held in a

similar action against court personnel and government officials entitled to immunity, "(a) complaint that sets out sufficient facts to demonstrate affirmatively that the plaintiff has no right to recover is properly dismissed without leave to amend." Ross v. Meagan, supra. Thus, since plaintiff's claims would be barred by the immunity doctrine, even viewed in the light most favorable to plaintiff, as they must be, and are, at this juncture, the complaint shall be dismissed for failure to state a claim upon which relief can be granted.

2. Abstention Doctrine

There is also a second, independent ground for dismissal. Plaintiff's case is still pending in the state

administrative and judicial system. In our system of federalism, the dual con-

siderations of comity and judicial economy instruct the federal courts to abstain from exercising jurisdiction over matters, such as the gun permit here, which are largely of state concern and subject to the special policies and review of a state's judiciary and administrative agencies. Burford v. Sun Oil Co., 319 U.S. 315 (1973). Particularly is that so when the state suit has not yet played itself out.

In Colorado River Water Conservation District v. U.S., 424 U.S. 800 (1976), the Supreme Court weighed four factors to determine whether the federal court should dismiss a federal action when there is a parallel state action: (1) existence of concurrent state proceeding; (2) the convenience of the forum; (3) the avoidance of piecemeal litigation; (4) the order in which jurisdiction was ob-

tained.

Here, all four factors weigh in favor of dismissal. (1) There is a concurrent state action, and indeed, one which has already progressed quite far toward a final decision, albeit at a snail's pace. (2) The state forum is convenient for all the parties, who are citizens and employees of Pennsylvania, situate in or near Philadelphia. (3) This federal action would entail review of many of the issues currently before the Board and formerly before the Commonwealth Court, thus posing the risk not only of piecemeal and duplicative adjudication, but also of inconsistent adjudication and unnecessary interference by the federal courts in the state court's action. (4) The state

system first assumed jurisdiction over this case, and it did so nearly three

years before it was brought before this federal tribunal. It would be counter-productive for the federal court to intermeddle in this case which has made some progress toward finality.

Upon hearing his litany of plaints, one can empathize with Mr. Laden's apparent belief that he finds himself left in the legal lurch. A year after L&I rejected his application, the Commonwealth Court declined to rule on the merits because L&I had not made factual findings, which it needed in order to have a case amenable to appellate review. In the seven months since the remand in October 1991, L&I has not made those findings. The City says that the plaintiff, under the Philadelphia Local Rules, must move to have a Common Pleas judge set a deadline for the case, in order to get L&I to comply with the remand order of the ap-

pellate court. Mr. Laden seems to think, perhaps understandably, that a remand and appellate command should be self-executing, not needing a nisi prius green light. But apparently that is not the way things are done in this particular venue of the Commonwealth.

CONCLUSION

Since immunity doctrine bars claims against these defendants and since abstention doctrine weighs against exercising jurisdiction over a case already pending for three years in state court, I conclude that this action should be

dismissed under Fed.R.Civ.P. 12(b)(6), for failure to state a claim upon which relief may be granted, and as a matter of comity between the federal and state judicial systems.

An order follows.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID M. LADEN, Plaintiff :

v. :

CITY OF PHILADELPHIA, CITY OF PHILADELPHIA EMPLOYEES WILLIE WILLIAMS, LAWRENCE KLOPFLE, RAYMOND HARTMAN, DONALD KLIGERMAN, ROBERT J. D' AGOSTINO, JAMES P. LYNN, ANTHONY P. RABUTINO, JIMMIE MOORE, ESQ., LARRY A. THOMAS, JERALD BATOFF, ESQ., F. LEE JONES, ALAN KESSLER, ESQ., HARRY SHUGAR, CHARISSE R. LILLIE, ESQ., CURELEY A. COLE, ESQ., JOHN P. STRAUB, ESQ., DAVID J. DOMZALSKI, ESQ., JOHN DOE AND RICHARD ROE, all City of Philadelphia employees individually and as employees of the City of Philadelphia, and NEW ROCK REPORTING CO., INC., T/A SCHULMAN/DE SIMONE - THE COURT REPORTERS, Defendants :

CIVIL ACTION NO. 92-0697 FILED JUNE 8, 1992 ENTERED: 6-9-92 CLERK OF COURT

ORDER

AND NOW, this 5th day of June, 1992, after hearing and argument in open court and upon consideration of Defendants' Motion to Dismiss, and the response thereto, and Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction, and the response thereto, it is ORDERED that the Default Judgment entered by the Clerk of Court on April 15, 1992,

is VACATED,[1] the Complaint is dismissed with prejudice, and the Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction are DENIED.

BY THE COURT:

Robert S. Gawthrop, III

Robert S. Gawthrop, J. III

1. On April 15, 1992, Plaintiff sought entry of default judgment against defendant New Rock Reporting Co., alleging that this defendant had failed timely to respond to the complaint. In fact, on March 2, 1992, the defendants' "including all named and unnamed defendants" jointly moved to dismiss. Thus, the plaintiff is not entitled to default.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID M. LADEN, Plaintiff :

v. :

CITY OF PHILADELPHIA, CITY OF PHILADEL- :
PHIA EMPLOYEES WILLIE WILLIAMS, LAWRENCE:
KLOPFLE, RAYMOND HARTMAN, DONALD KLIGER-:
MAN, ROBERT J. D' AGOSTINO, JAMES P. :
LYNN, ANTHONY P. RABUTINO, JIMMIE MOORE,:

ESQ., LARRY A. THOMAS, JERALD BATOFF, :
ESQ., F. LEE JONES, ALAN KESSLER, ESQ., :
HARRY SHUGAR, CHARISSE R. LILLIE, ESQ., :
CURELEY A. COLE, ESQ., JOHN P. STRAUB, :
ESQ., DAVID J. DOMZALSKI, ESQ., JOHN DOE:
AND RICHARD ROE, all City of Philadel- :
phia employees individually and as emp- :
ployees of the City of Philadelphia, and:
NEW ROCK REPORTING CO., INC., T/A SCHUL-:
MAN/DE SIMONE - THE COURT REPORTERS, De-:
fendants

CIVIL ACTION NO. 92-0697 FILED JULY 28, 1992 CLERK OF COURT ENTERED: 7-29-92

ORDER

AND NOW, this 28th day of July, 1992, upon consideration of Plaintiff's Motion for Reconsideration, and the response thereto, it is ORDERED that the Plaintiff's motion is GRANTED, and the case having been reconsidered, and the court being convinced of the validity of

its original order, that Order of June 5, 1992, dismissing the complaint, is hereby REAFFIRMED.

BY THE COURT:

Robert S. Gawthrop, III

Robert S. Gawthrop, J. III

APPENDIX D

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 92-1628

DAVID M. LADEN

v.

CITY OF PHILADELPHIA,

CITY OF PHILADELPHIA EMPLOYEES

SUR PETITION FOR REHEARING

Present: SLOVITER, Chief Judge, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO, ROTH and LEWIS, Circuit Judges

The petition for rehearing filed by appellant, David M. Laden, in the above-entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

Dated: JAN. 22, 1993 By the Court:

D. Sloviter

Chief Judge

APPENDIX E

UNITED STATES CONSTITUTION

AMENDMENT 14, SECTION 1

All persons born or naturalized in the United States and subject to the ju-

risdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX F

TITLE 18, U.S.C. § 1964(c)

CIVIL REMEDIES

Any person aggrieved in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

APPENDIX G

TITLE 42, U.S.C. § 1983

CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX H

TITLE 2, Pa. C.S. § 555

LOCAL AGENCY LAW

All adjudications of a local agency shall be in writing, shall contain findings and the reasons for the adjudication, and shall be served on all parties or their counsel personally, or by mail.

APPENDIX I

PHILADELPHIA COURT OF COMMON PLEAS

CIVIL RULE 320(H):

RECORD, TRANSMITTAL

(1) The original papers and exhibits filed with the agency, the decision and order and the transcript of proceedings, if any, shall constitute the record on appeal.

(2) The agency shall transmit the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, to the Protho-

notary within forty days after receipt of the Notice of Appeal.

(3) The agency shall serve notice upon the appellant and the Clerk of the Motion Court certifying that the record is complete for the purposes of the appeal and indicating the date upon which the record was received by the Prothonotary.

APPENDIX J

COMMONWEALTH COURT OF PENNSYLVANIA

ORDER AND OPINION OF OCTOBER 21, 1991

IN THE COMMONWEALTH COURT

OF PENNSYLVANIA

DAVID M. LADEN,	:	No. 939 C.D.
Appellant	:	1991
v.	:	
BOARD OF LICENSE AND	:	Submitted
INSPECTION REVIEW,	:	August 9, 1991
Appellee	:	

BEFORE: HONORABLE MADALINE PALLADINO,

Judge

HONORABLE JAMES R.KELLEY,

Judge

HONORABLE GENEVIEVE BLATT,

Senior Judge

OPINION NOT REPORTED

FILED: October 21, 1991

MEMORANDUM OPINION BY JUDGE PALLADINO

David Laden (Laden) appeals an order of the Court of Common Pleas of Philadelphia County (trial court) which affirmed a decision of the Philadelphia Board of License and Inspection Review (Board) denying Laden's application for a gun license.

On July 5, 1989, Laden applied to the Philadelphia Department of Licenses and Inspections (Department) for a license "to transport firearms to shows and /or meetings." By letter dated August 2, 1989, the Department denied Laden's ap-

plication for the license.

Laden appealed the Department's denial to the Board. After numerous hearings, the Board informed Laden by letter dated February 7, 1990 that it had affirmed the Department's decision,

but gave no grounds for so doing. The letter contained no findings of fact nor the reasons for the adjudication, nor were any made.

On February 26, 1990, Laden appealed the Board's decision to the trial court. Without taking additional evidence, the trial court affirmed the Board on March 18, 1991. The trial court grounded its decision in Laden's failure to establish to the Board's satisfaction his status as a gun collector.

Laden appeals pro se the trial court's decision to this court. Laden

argues that various violations of his constitutional rights have occurred, that the Board and trial court committed various errors of law in interpreting the Pennsylvania Uniform Firearms Act, 18 Pa. C.S. §§ 6101-20, that findings of fact and reasons for the adjudication were not made, that the Board's and the Department's dispositions were arbitrary and capricious.

The Board argues for affirmance on the ground that its action was not arbitrary and capricious because Laden, having not established his status as a gun collector, was not entitled to a license. The Board also argues that Laden has waived many of his arguments presented at this appeal because he failed to raise these arguments to the trial court.

Appeals from gun license proceedings are governed by the Local Agency Law, 2

Pa. C.S. §§ 551-555 and 751-754. 18 Pa. C.S. § 6114. That law provides that where the trial court takes no additional evidence, our scope of review is limited to determining whether constitutional rights have been violated, whether an error of law has been made, whether the procedural provisions of the Local Agency Law, 2 Pa. C.S. §§ 551-555, have been violated, or

whether findings of fact are supported by substantial evidence. Local Agency Law § 754(b), 2 Pa. C.S. § 754(b); Drennan v. City of Philadelphia, Board of Pensions and Retirement, 106 Pa. Commonwealth Ct. 262, A.2d 1265 (1987).

Section 555 of the Local Agency Law, 2 Pa. C.S. § 555, provides that "(a)ll adjudications of a local agency shall be in writing (and) shall contain findings

and the reasons for the adjudication." Our review of this case is precluded because the Board did not find any facts and did not state reasons for its adjudication. This court is unable to perform its appellate function, and must therefore remand to the Board so that it can make the appropriate findings of fact and reasons for the adjudication. See Madeja v. Whitehall Township, 73 Pa. Commonwealth Ct. 34, 457 A.2d 603 (1983); Action Alliance of Senior Citizens of Greater Philadelphia, Inc. v. Philadelphia Gas Commission, 45 Commonwealth Ct. 234, 406 A.2d 1155 (1979).

Because of the lack of findings of fact and reasons for the adjudication, our consideration of the other arguments presented on this appeal must be deferred.

Accordingly, the order of the Court

of Common Pleas of Philadelphia County is vacated, and this case is remanded to the Board to adopt findings of fact and reasons for the adjudication pursuant to Section 555 of the Local Agency Law, 2 Pa. C.S. § 555.

Madaline Palladino

MADALINE PALLADINO, JUDGE

IN THE COMMONWEALTH COURT

OF PENNSYLVANIA

DAVID M. LADEN,	:	
Appellant	:	
v.	:	No. 939 C.D.
BOARD OF LICENSE AND	:	1991
INSPECTION REVIEW,	:	
Appellee	:	

ORDER

AND NOW, October 21, 1991, the March 18, 1991 order of the Court of Common Pleas of Philadelphia County is vacated.

This case is remanded to the Board of License and Inspection review to make findings of fact and reasons for the adjudication in accordance with the foregoing opinion.

Jurisdiction relinquished.

Madaline Palladino

MADALINE PALLADINO, Judge

APPENDIX K

PHILADELPHIA COURT OF COMMON PLEAS

ORDER OF OCTOBER 11, 1990

DAVID M. LADEN	:	COURT OF COMMON PLEAS
VS.	:	PLEAS COUNTY OF
BOARD OF LICENSE &	:	PHILADELPHIA FEBRUARY
INSPECTION REVIEW	:	TERM, 1990 NO. 4769

ORDER

AND NOW, this 11th day of October, 1990, upon consideration of Plaintiff David Laden's Motion to grant appeal, it is hereby ORDERED and DECREED as follows:

1. Plaintiff's Motion to grant appeal is denied without prejudice to reinstate the same at a later date.

2. Defendant Board of License and Inspection Review is instructed to comply with Philadelphia Civil Rule 320(H) and within 40 days from the date of this Order transmit the record on appeal to the Prothonotary of this Court.

BY THE COURT:

ML/cae:ml

Samuel M. Lehrer

SAMUEL M. LEHRER, J.

APPENDIX L

STIPULATION IN MIDNIGHT SESSIONS,LTD

t/a AFTER MIDNIGHT, ET AL. v.

CITY OF PHILADELPHIA, et al.

IN THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 90-0132

STIPULATION

(PARAGRAPH 2)

2. The jury shall be charged and directed that the City of Philadelphia is legally responsible for all acts and omissions of each member of the Board of License and Inspection Review, Plonski, D'Agostino, Mosley and Cole. The City of Philadelphia shall make no contrary argument or contention on appeal, or in any subsequent proceedings arising out of this matter.

Date: 7-31-90 Michael G. Trachtman

Michael G. Trachtman

Attorney for Plaintiffs

Date: 8-1-90 Richard G. Freeman

Richard G. Freeman

Attorney for Defendants

Approved:

Clarence C. Newcomer

J.

FILED: AUG. 02 1990

(Docket Entry No. 106)